

## D. REMARKS

### *Status of the Claims*

Claims 1, 3, 4, and 10 are currently pending. Claims 2, 5-9, and 11-41 are canceled. Claims 1, 3, and 10 are amended.

In this Amendment, Applicants have amended claims 1, 3, 4, and 10 and canceled claims 2, 5-9, and 11-41 from further consideration in this application. Applicants are not conceding that the subject matter encompassed by claims 1-41, prior to the Amendment, is not patentable. Claims 1, 3, 4, and 10 were amended and claims 2, 5-9, and 11-41 were canceled in this Amendment solely to facilitate expeditious prosecution of the remaining claims. Applicant respectfully reserves the right to pursue additional claims, including the subject matter encompassed in claims 1-41, as presented prior to this Amendment and additional claims in one or more continuing applications.

In addition, with regard to claim 1, Applicants note that the specification teaches each of the amended elements of claim 1, therefore no new matter is added through the amendments to the claim. For example, paragraphs 0054, 0060, and 0111 teach distributing an electronic work to a user at a first player with a distribution cookie for tracking a wireless broadcast distribution path of said electronic work and any responses by recipients of said electronic work along said wireless broadcast distribution path; previously recited dependent claim 5 and paragraphs 0054, 0060, 0061, 0062, 0085, and 0111 teach updating each said separate copy of said distribution cookie at each said at least one second player with tracking information about a location of said at least one second player and with a response by a separate recipient at each said at least one second player to said electronic work, wherein said response comprises at least one from among a purchase of said electronic work and a rating of said electronic work; previously recited dependent claim 6 and paragraphs 0062 and 0111 teach broadcasting said electronic work with each said separate copy of said distribution cookie from each said at least one second player to at least one next player and updating each said separate copy of said distribution cookie at each said second

player with a time stamp of said broadcast of said electronic work to said at least one next player; paragraph 0081 teaches the amended updates to responsive to detecting a network connection at least one of at said at least one second player and said at least one next player to a tracking server, providing said separate copy of said distribution cookie from at least one of said at least one second player and said at least one next player to [[a]] said tracking server; previously recited claim 38 and paragraphs 0055, 0056, 0057, 0058, 0061, 0062, 0104, 0111 teach analyzing each said separate copy of said distribution cookie received at said tracking server from at least one of said at least one second player and said at least one next player to determine at least one from among a distribution rate of said electronic work detected from each said time stamp, a region of distribution of said electronic work detected from each said location, a rating average for said electronic work from ratings by any of said recipients of said electronic work, and any purchases of said electronic work made by any of said recipients of said electronic work; previously cited claim 37 and paragraph 0063 teach providing said user at said first player with an electronic compensation based on a type of distribution of said electronic work by said user from said analysis of said distribution cookie.

In addition Applicants note that claims 3 and 10 are amended to maintain antecedent basis in view of the amendments to claim 1, and the amendments are supported throughout the specification of the present application, therefore no new matter is added through the amendments to the dependent claims.

Applicants respectfully request entry of the preliminary amendments, an expeditious examination, and allowance of the pending claims.

#### ***Additional Information which may be Material to Patentability***

Applicants respectfully direct the Examiner's attention to several matters regarding information which may be material to patentability in the present application.

Applicants note that the present application cites two applications which are co-pending with the present application, which are incorporated by reference into the present application. As noted in the amendments to the specification, Applicants clarify

that these applications to which the present application is cross-referenced, include US Patent Application Serial No. 10/728,163 and 10/728,164. In these related applications that are co-pending with the present application, Applicants fulfill the duty of candor and good faith in dealing with the Office to disclose information with Applicants' knowledge as to other co-pending application, including material rejections in co-pending applications, as described in 37 CFR 1.56 and recently clarified in *McKesson Information Solutions, Inc. v. Bridge Medical, Inc.*, 487 F.3d 897, 82 USPQ2d 1865 (May 18, 2007). In particular, Applicants note the Office Action from the same Examiner as assigned to the present application, John J Lee, received in 10/728,163 dated 11/02/2007, and Applicants response to this Office Action dated 02/04/08. Applicants have noted the references cited in this Office Action in the IDS filed herewith, and direct the Examiner to the arguments presented in that Office Action in association with the cited prior art references.

### ***Conclusion***

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims is respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

No extension of time is believed to be necessary. If, however, an extension of time is required, the undersigned hereby authorizes the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

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